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Remarks

Claims 1-21 are pending in the Application. Claims 3, 5-8, 10, 12, 14 and 17-20 are withdrawn from consideration as being drawn to a non-elected invention. The drawings are objected to. Claim 9 is objected to as discussed below. Claims 1, 2, 4, 13 and 16 are rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 3,669,499 (Semplonius et al.). Claims 1, 2, 4, 9, 15 and 21 are rejected to under Section 102(b) as anticipated by or, in the alternative, under Section 103(a) as obvious over U.S. Patent No. 5,913,571 (Dystra et al.). Claim 11 is rejected under Section 103(a) as being unpatentable over Dystra et al. as applied to claims 1, 2, 4, 9, 15 and 21 above, and further in view of U.S. Patent No. 5,988,757 (Vishey et al.).

Affirmation of Election of Species

Applicants affirm the provisional election of Species I, Figures 1-4, on which claims 1, 2, 4, 9, 11, 13, 15, 16 and 21 read. Contrary to the Examiner's statement in the Office Action, this provisional election of species was not made with traverse. Only the previous election of claimed inventions (claims 1-16 and 21) was made with traverse.

Drawings

The Examiner indicates that the drawings are objected to as failing to comply with 37 C.F.R. §1.84(p)(4) because reference characters "36", "42", and "44" have been used to designate the first bend line. Actually, only reference character 36 is used to designate the first bend line. Reference character 42 is used to designate "a first side of the first bend line" and reference numeral 44 is used to designate "a second side of the first bend line." In order to clarify these intended designations, paragraph [0029] of the Specification has been amended to refer to "a first side 42 of the first bend line 36" and "a second side 44 of the first bend line 36." Additionally, paragraph [0029] has been amended with respect to the second bend line 38 and the third bend line 40 to refer to "a first side 46 of the second bend line 38", "a second side 48 of the second bend line 38", "a first side 50 of the third bend line 40", and "a second side 52 of the third bend line 40".

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Paragraph [0048] has been amended in similar fashion to refer to "a first side 46B of the second bend line 38B" and "a second side 48B of the second bend line 38B."

Additionally, paragraph [0049] has been amended to refer to "a first side 42C of the first bend line 36C", "a second side 44C of the first bend line 36C", "a first side 46C of the second bend line 38C", and "a second side 48C of the second bend line 38C".

With these amendments to the Specification, no changes to the drawings are necessary. The amendments present no new matter.

Specification

The Examiner objects to the Abstract of the disclosure as it is not limited to a single paragraph. Accordingly, as shown in the attached Amendments to the Specification, the Abstract is amended to consist of a single paragraph. No new matter is presented.

Claim Objections

The Examiner indicates that:

[c]laim 9 is objected to because of the following informalities: "the back top panel portion is on a first side of the third bend and the back bottom panel portion is on a second side of the third bend" (lines 11-12) should read – the back bottom panel portion is on a first side of the third and the lower seat bottom panel is on a second side of the third bend such that the back bottom portion is adjacent to the back top panel portion--. Appropriate correction is required.

As indicated in the Listing of Claims, Applicants have amended claim 9 per the Examiner's suggestion. Accordingly, the objection to claim 9 is believed to be overcome.

Claim Rejections

Claims 1, 2, 4, 13 and 16: Anticipated by or Obvious Over Semplonius et al.

Claim 1 has been amended such that:

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at least one of the lower seat portion and back portion has a top panel portion; and a bottom panel portion having a surface [that is] substantially juxtaposed with a surface of the top panel portion.

Claim 4 has been amended in light of the amendment to claim 1 to specify that "the top panel portion [of claim 1] is one of the lower seat top panel portion and the back top panel portion [of claim 4] and the bottom panel portion [of claim 1] if the respective one of the lower seat bottom panel portion and the back bottom panel portion [of claim 4]."

As best shown in Figure 3, Applicants' Species I has a lower seat bottom panel portion 26 separated from a lower seat top panel portion 22 by a second bend line 38 such that a surface of the lower seat bottom panel portion 26 is substantially juxtaposed with a surface of the lower seat top panel portion 22. The mating of the flanges described in paragraph [0043], lines 5-7, also implies that the lower seat bottom panel portion 26 is substantially juxtaposed with the lower seat top panel portion 22. (Amended claim 1 also reads on the species of Applicants' Figures 7A-7B, both with respect to the back portion 98C and the lower seat portion 96C.)

For a rejection to be proper as an anticipation under 35 U.S.C. § 102, every element and limitation found in the rejected claim must be found in the 102 reference. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See MPEP §2131. Neither the shell 17 nor the trim shell 20 of Semplonius et al. has a bottom panel portion that has a surface that is "substantially juxtaposed with a surface of the top panel portion."

Accordingly, the rejection of amended claim 1, and of claims 2, 4, 13 and 16 which respectively depend therefrom, as anticipated by Semplonius et al. under Section 102(b) is believed to be overcome.

Furthermore, a *prima facie* case of obviousness requires that the prior art references teach or suggest all claim limitations of the examined claim. (MPEP 2143.03) With respect to the alternative rejection of claims 1, 2, 4, 13 and 16 under Section 103(a)

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over Semplonius et al., because all of the limitations of amended claim 1 are not found in Semplonius et al. (see above discussion), the rejection is believed to be overcome.

Claims 1, 2, 4, 9, 15 and 21: Anticipated by or Obvious over Dystra et al.

Dystra et al.'s seating apparatus referred to by the Examiner does not disclose all of the limitations of amended claims 1, 4, 9 and 21 nor of claims 2 and 15 which depend from claim 1. Specifically, Dystra et al.'s seating apparatus of Figure 7, referred to by the Examiner, has neither a lower seat portion nor a back portion that has "a top panel portion; and a bottom panel portion having a surface substantially juxtaposed with a surface of the top panel portion" as required by claim 1. Claim 21 has also been amended to specify a corrugated lower seat bottom panel portion, that "the lower seat bottom panel portion has a surface that is substantially juxtaposed with a surface of the lower seat top panel portion", that the back bottom panel portion is corrugated, and that "the back bottom panel portion has a surface that is substantially juxtaposed with a surface of the back top panel portion." Corrugations 66 are shown in Figures 1 and 3 and discussed in paragraphs [0031] and [0032] of the application.

Dystra et al.'s foot rest portion 28 (Examiner-named lower seat portion) is neither corrugated nor substantially juxtaposed with the bench portion 33 in the stored position of Figure 7 nor in the extended position of Figure 11. Furthermore, Dystra et al.'s back top panel portion 86 does not have a bend line that separates a [back] top panel portion from a [back] bottom panel portion so that a surface of the "[back] bottom panel portion [is] substantially juxtaposed with a surface of the [back] top panel portion" as required by amended claim 1. In fact, none of Dystra et al.'s four surfaces: back 86, bench portion 33, footrest 28 and the leg 99 that extends from footrest portion 28 (see Figure 11) have surfaces that are substantially juxtaposed with one another. Accordingly, the rejection of claims 1, 2, 4, 9, 15 and 21 as anticipated by Dystra et al. under Section 102(b) is believed to be overcome.

"An obviousness rejection requires some teaching, suggestion or motivation to modify or combine the references." (MPEP 2143.01) "The desirability for making the proposed modification or combination must be found in the references or in the Examiner's line of reasoning." (MPEP 706.02(j)). Dystra et al. provide no motivation or suggestion for

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making a surface of the lower seat portion 28 or of the bench portion 33 substantially juxtaposed with one another. In fact, the acute angle formed between bench portion 28 and leg portion 99 and the obtuse angle formed between back portion 86 and bench portion 33 appear to make any such substantially juxtaposed arrangement unachievable, even if Dystra et al. provided a suggestion or motivation to provide such an arrangement, which they do not.

For at least these reasons, the rejection under Section 102(b) (or alternatively under Section 103(a)) of amended claims 1, 4 and 9, claims 2 and 15 which depend from claim 1 and amended claim 21 is believed to be overcome.

Claim 11: Obvious over Dystra et al. in view of Vishey et al.

The Examiner relies upon Vishey et al. to provide the matable seat track member of claim 11 that is missing from Dystra et al. Again, a *prima facie* case of obviousness requires that the prior art references teach or suggest all claim limitations of the examined claim. (MPEP 2143.03). Because claim 11 depends from claim 1, and because Dystra et al. do not provide all of the elements and limitations of amended claim 1 (see above discussion), the combination of Dystra et al. and Vishey et al. cannot make claim 11 obvious. For at least this reason, the rejection of claim 11 under Section 103(a) is believed to be overcome.

Furthermore, even if the combination of Dystra et al. and Vishey et al. provided all of the elements and limitations (which it does not), a person of ordinary skill in the art would not be motivated to make the combination because to do so would render the seating apparatus of Dystra et al. inoperable for its intended purpose: there is no apparent way to mate the seat frame (83, 33, 28, 99) of Dystra et al. to a seat track member while still allowing Dystra et al. to be transformed from the bench-type seating apparatus of Figure 7 to the lounge-type seating apparatus of Figure 11. The Vishey et al. reference, which does not even show a seat track member and only mentions the existence of one matable with the more conventionally-shaped seat frame disclosed therein (see col. 3, lines 3-6 referred to by the Examiner), would not suggest to one skilled in the art or motivate one skilled in the art to mate Dystra et al.'s seat frame with a seat track member. Therefore, for at least this reason as well, the rejection of claim 11 under Section 103(a) is believed to be overcome.

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Conclusion

In light of the above Amendments to the Specification and to the claims as well as the above arguments, the objections to the drawings, the objection to claim 9 and the rejections of claims 1, 2, 4, 9, 11, 13, 15, 16 and 21 are believed to be overcome.

Respectfully submitted,

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